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No. 07-663

IN THE

Supreme Court of the United States

AK STEEL CORPORATION RETIREMENT ACCUMULATION PENSION PLAN AND AK STEEL CORPORATION BENEFIT PLANS ADMINISTRATIVE COMMITTEE

Petitioners,

v.

JOHN D. WEST, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

On May 23, 2008, the United States filed an amicus brief in support of the petition for certiorari in *Amschwand* v. *Spherion Corp.*, No. 07-841. Petitioners submit this Supplemental Brief pursuant to Rule 15.8 of the Rules of this Court because the government's brief in *Amschwand* demonstrates the importance of granting review in this case.

1. In its brief, the United States urges this Court to grant review in *Amschwand* "to eliminate the confusion among the courts of appeals" about the scope of relief available under ERISA § 502(a)(3). U.S. Br. 8. Section 502(a)(3) authorizes federal courts to grant "equitable relief" to redress violations of ERISA or of the terms of an ERISA plan. 29 U.S.C. § 1132(a)(3). Most of the courts of appeals have held that this provision does not allow courts to grant monetary relief for breaches of ERISA by ERISA fiduciaries because such relief is not properly characterized as "equitable." U.S. Br. 15. The Seventh Circuit has reached the opposite conclusion. *Id.* at 16.

The United States argues that the majority view of the courts of appeals is mistaken because a suit against an ERISA fiduciary for monetary relief from a breach of fiduciary duty "is directly analogous to a traditional action by the beneficiary of a trust to compel the trustee to redress a breach of trust." U.S. Br. 10. Such suits, the government argues, "were considered equitable in the days of the divided bench." *Id.* at 11. The government concludes that "this Court should grant review and correct the court of appeals' misinterpretation of Section 502(a)(3) by holding that monetary relief is available against

fiduciaries who breach their ERISA duties." *Id.* at 21.

2. The United States' recommendation to grant review in *Amschwand* underscores the importance of granting review in this case. According to the United States, the courts of appeals have adopted an unduly narrow reading of § 502(a)(3) that often leaves plan participants "without any meaningful remedy" for their injuries. U.S. Br. 7, 18. This is exactly the mistake that led the Sixth Circuit into error in the decision below.

The Sixth Circuit confronted the question of whether Respondent's ERISA claim could be remedied under either of two ERISA provisions – § 502(a)(3) or § 502(a)(1)(B). The court concluded that Respondent could *not* obtain monetary relief under § 502(a)(3) because the requested relief would constitute "legal" relief, not "equitable" relief. *See* Pet. App. 12a-13a. Based on this premise – which the United States rejects in its amicus brief – the court concluded that unless Respondent were afforded a remedy under § 502(a)(1)(B), participants in ERISA plans would have no remedy at all for a broad swath of ERISA violations. *See id.* at 16a (reiterating the district court's "aptly stated" conclusion that if Respondent had no remedy under § 502(a)(1)(B), benefit payments that "'blatantly violate ERISA'" would be immune from challenge). Troubled by the prospect of a broad category of claims without a remedy, the court reached the strained conclusion that Respondent had a remedy under § 502(a)(1)(B). *Id.* at 17a; *see also id.* at 67a.

The United States' brief in *Amschwand* makes clear that the Sixth Circuit was mistaken. Contrary

to the Sixth Circuit's conclusion, relief under § 502(a)(1)(B) is *not* available here because Respondent alleges a violation of ERISA provisions rather than a violation of plan terms. Section 502(a)(1)(B) provides redress only for violations of "the terms of the plan," 29 U.S.C. § 1132(a)(1)(B), not for violations of ERISA provisions, *see* Pet. 13-21.

By contrast, the United States argues that relief *is* available in a case like this one under § 502(a)(3). Respondent sued the plan administrator – an ERISA fiduciary under 29 U.S.C. § 1002(21)(A) – for breach of an ERISA provision that the plan administrator had a fiduciary duty to follow, *see* 29 U.S.C. § 1104(a)(1)(D); *Aetna Health Inc.* v. *Davila*, 524 U.S. 2000, 218 (2004) (holding that a plan administrator's determination of a benefit under ERISA "is generally a fiduciary act"). The United States explains that § 502(a)(3) provides a monetary remedy for such a claim because equity traditionally allowed an "action by the beneficiary of a trust to compel the trustee to redress a breach of trust." U.S. Br. 10; *see also id.* at 21 ("monetary relief is available against fiduciaries who breach their ERISA duties").

Whether relief for a statutory claim like Respondent's is available under § 502(a)(3), as the United States contends, or under § 502(a)(1)(B), as the Sixth Circuit erroneously concluded, is a matter of great practical and precedential importance. First, the Sixth Circuit's interpretation would allow *state courts* to construe ERISA provisions because state courts have jurisdiction over § 502(a)(1)(B) claims. Pet. 19-22. This would frustrate a deliberate Congressional decision to vest federal courts with exclusive jurisdiction over the interpretation of

ERISA. *Id.* The United States' interpretation avoids this problem, since state courts have no jurisdiction over § 502(a)(3) claims. *See* 29 U.S.C. § 1132(e)(1).

Second, as emphasized in the government's brief, the lower courts are in a state of "confusion" about the proper interpretation of ERISA § 502 – confusion that this Court should eliminate by granting review in this case. The Sixth Circuit's unduly *narrow* reading of § 502(a)(3) deepens the circuit split regarding that provision discussed at page 15 of the government's brief. Separately, the Sixth Circuit's unduly *broad* reading of § 502(a)(1)(B) exacerbates the split between the Sixth and Seventh Circuits, on the one hand, and the Fifth Circuit, the Eighth Circuit, and the highest courts of Vermont and Ohio, on the other hand, regarding the interpretation of § 502(a)(1)(B). Pet. 13-19.

Finally, the question of whether § 502(a)(1)(B) or § 502(a)(3) provides the correct remedial path here makes a crucial difference to the outcome of this case. The Sixth Circuit found that Respondent waived any claim for equitable relief under § 502(a)(3) in the proceedings below. *See* Pet. 9-10. Moreover, the standards for granting relief under §§ 502(a)(1)(B) and 502(a)(3) are different, and Respondent has not met the standards imposed by § 502(a)(3).[1]

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[1] Whereas monetary relief under § 502(a)(1)(B) ordinarily flows automatically from a finding of a violation, relief is available under § 502(a)(3) only when an award would be "equitable" and "appropriate," 29 U.S.C. § 1132(a)(3), a showing that Respondent here never made. Pet. 18-19 n. 7; Petitioners' Reply at 8-9 n.2.

CONCLUSION

For the foregoing reasons, as underscored and supported by the United States' brief in *Amschwand*, this Court should grant review in this case. In the alternative, the Court should hold this case pending the disposition of the *Amschwand* petition.

Respectfully submitted,

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